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Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NICOLE MCKINESS, an Individual,

Plaintiff,

Case No.

vs.

SMITH'S FOOD & DRUG CENTERS, INC.,
a Foreign Corporation, d/b/a SMITH'S #358,
a/k/a THE KROGER CO., DOE
EMPLOYEES I through X, and ROE
BUSINESS ENTITIES I through X inclusive,

Defendants.

NOTICE OF REMOVAL

Defendant, SMITH'S FOOD & DRUG CENTERS, INC. ("SMITH'S") hereby gives notice of its removal of Case No. A-20-823790-C from the Eighth Judicial District Court, Clark County, Nevada, to this Court. This Notice of Removal is filed pursuant to 28 U.S.C. §§1441(a) and 1446. As grounds for removal, SMITH'S states as follows:

I.

NOTICE OF REMOVAL IS TIMELY

1. On October 27, 2020, Plaintiff NICOLE MCKINESS, filed this lawsuit against SMITH'S. Pursuant to 28 U.S.C. §1446(a), a complete copy of the state court file, including the Complaint and process, is attached hereto as Exhibit "A".

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2. SMITH'S was served with process on or about November 2, 2020. SMITH'S hereby reserves any and all rights and defenses to Plaintiff's Complaint.

3. The Complaint filed and served on SMITH'S merely alleged that "As a direct and proximate result of the actions of Defendants, and each of them, Plaintiff suffered injuries to her body. These injuries caused and will continue to cause her mental and physical pain and suffering in an amount of general damages in excess of \$15,000.00." (Compl. ¶11). In addition, Plaintiff has also alleged that "As a direct and proximate result of the negligence of Defendants, and each of them Plaintiff had to employ physicians and other health care providers to examine, treat, and care for her injuries. As a result, she incurred medical and incidental expenses in an amount of special damages in excess of \$15,000.00. (Compl. ¶12).

4. Defense counsel learned that the value of this case was sufficient for Federal jurisdiction on November 30, 2020. On that date, Plaintiff filed and served a Request for Exemption from Arbitration in the pending State Court litigation. Therein, Plaintiff alleges that her medical specials total \$110,505.13. (Pl.'s Request at 5).

Upon receiving this information, Defense counsel learned that the "amount in controversy" exceeds the jurisdictional minimum for diversity jurisdiction.

5. This Notice of Removal is timely filed under 28 U.S.C. §1446(b), which provides:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

6. The following pleadings have been entered and/or filed in State Court:

- a. Plaintiff's Complaint filed October 27, 2020;
- b. Affidavit of Service of Summons and Complaint filed November 3, 2020;
- c. SMITH'S Answer to Plaintiff's Complaint filed November 23, 2020;
- d. Plaintiff's Request for Exemption from Arbitration was served on November 30, 2020; and

e. Commissioner's Decision on Request for Exemption was served on December 16, 2020.

7. Other than the pleadings discussed above, no further proceedings have taken place in District Court, Clark County, Nevada as of the filing of this notice of removal.

II.

DIVERSITY JURISDICTION EXISTS

8. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332. This action may be removed pursuant to 28 U.S.C. §1441, because the amount in controversy exceeds \$75,000, exclusive of interest and costs; the suit involves a controversy between citizens of different states; and none of the properly joined defendants is a citizen of Nevada.

A. The Amount in Controversy Requirement is Satisfied.

9. Plaintiff's Complaint merely alleged that "As a direct and proximate result of the actions of Defendants, and each of them, Plaintiff suffered injuries to her body. These injuries caused and will continue to cause her mental and physical pain and suffering in an amount of general damages in excess of \$15,000.00." (Compl. ¶11). In addition, Plaintiff has also alleged that "As a direct and proximate result of the negligence of Defendants, and each of them Plaintiff had to employ physicians and other health care providers to examine, treat, and care for her injuries. As a result, she incurred medical and incidental expenses in an amount of special damages in excess of \$15,000.00. (Compl. ¶12).

10. In addition to the above, Plaintiff's Request for Exemption from Arbitration served on November 30, 2020 indicated that Plaintiff's medical specials total \$110,505.13. (Pl.'s Request at 5).

B. The Parties Are Diverse.

11. The diversity of citizenship requirement is satisfied. SMITH'S is informed and believes that Plaintiff was at the time of her Complaint a citizen and resident of the State of Nevada. (See Compl. ¶2) .

12. SMITH'S was at the time of the filing of Plaintiff's Complaint and is now an Ohio Corporation with its principal place of business in the State of Utah.

III.

REMOVAL TO THIS JURISDICTION IS PROPER

13. Pursuant to 28 U.S.C. §§1332, 1441, and 1446, removal of the above-captioned state court action to this Court is appropriate.

14. Pursuant to 28 U.S.C. §1441(a), removal is made to this Court as the district and division embracing the place where the state action is pending 28 U.S.C. §108.

15. SMITH'S reserves the right to amend or supplement this Notice of Removal.

16. SMITH'S reserves all defenses, including, without limitation, the defense of lack of personal jurisdiction.

17. SMITH'S requests a trial by jury of all issues.

18. Defense counsel is providing Plaintiff, by and through her counsel, written notice of the filing of this Notice of Removal as required by 28 U.S.C. §1446(d). Further, Defense counsel is filing a copy of this Notice of Removal with the Clerk of the Eighth Judicial District Court, Clark County, Nevada, where the action is currently pending.

Dated this 30th day of December, 2020.

COOPER LEVENSON, P.A.

By /s/ Jerry S. Busby

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